

**INTERSESSION REPORT OF THE WORKING
GROUP ON INDIGENOUS
POPULATIONS/COMMUNITIES IN AFRICA**

**Commissioner Soyata MAIGA
Chairperson of the Working Group**

**53rd Ordinary Session of the African Commission on
Human and Peoples' Rights**

Banjul, The Gambia

9 - 23 April 2013

In accordance with Rule 23(3) of the Rules of Procedure of the African Commission and in my capacity as the Chairperson of the Working Group on Indigenous Populations/Communities, I present this report on the promotion activities carried out since the 52nd Ordinary Session of the African Commission held in Yamoussoukro, Côte d'Ivoire from 9 to 22 October 2012.

The report also covers activities carried out by Expert members on behalf of the Working Group during the same period.

I - Activities undertaken in my capacity as the Chairperson of the Working Group

A. Participation in Seminars/Forums

1. 21 - 22 November 2012

I chaired the meeting of the Working Group on Indigenous Populations/Communities (the Working Group) held in Arusha, United Republic of Tanzania. During the meeting, the discussions focused on activities carried out by Members of the Group during the intersession, among which were publications, distribution and launching of the video film in Gabon, Burundi and Uganda. The Working Group also met with the Registrar of the African Court on Human and Peoples' Rights, who represented the President of the Court, and discussed possibilities of future collaboration with the Court on issues of common interest. The Working Group also held discussions with the GIZ representative on possibilities of collaboration on issues regarding indigenous populations in Africa.

2. 23 November 2013

I attended, with other members of the Working Group, the official launching ceremony in Arusha of the Working Group's video film entitled "**A Question of Justice: Indigenous Peoples' Rights in Africa**". The launching ceremony was organized by the NGO PINGO's Forum in collaboration with the Working Group. It brought together representatives from various ministries, including the Office of the Prime Minister and the Ministry of Constitutional and Legal Affairs,

judge of the High Court of Arusha, members of civil society, representatives of indigenous communities and other stakeholders.

In addition to my opening remarks, presentations were made on the Protection of Indigenous Peoples' Rights under the UN system and the African Commission by Advocate William Nysha, and on the Situation of Indigenous Peoples in Tanzania by Mr. Edward Porokwa. The video film was shown to participants, followed by discussions.

3. 27 - 28 November 2012

At the initiative of the UN Office of the High Commissioner for Human Rights, I chaired the Fifth Session of the Forum on Minority Issues that was held in Geneva. The Session focused on practical and concrete measures aimed at ensuring the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as on relevant recommendations to promote greater understanding of the text by States and other stakeholders involved in the promotion and protection of minorities. In light of this, various topics were discussed, including an assessment of how the Declaration has lived up to expectations 20 years since its adoption in 1992; discussions on the rights of youths hailing from minority groups were widely shared; best practices and positive measures were identified; and challenges faced in the practical implementation of the Declaration were discussed.

More than 400 participants attended the Forum, including representatives of governments, minority communities from all regions of the world, treaty bodies, special procedures, United Nations specialized agencies, regional intergovernmental bodies, national human rights institutions and civil society.

4. 11 - 12 February 2013

I attended the first global meeting of the IFAD Indigenous Peoples' Forum held in Rome, Italy. During the meeting presentations were made on the advancements of the 2011-2013 Road Map establishing the Indigenous Peoples' Forum at IFAD, following the recommendations of the regional workshops held in Asia and the Pacific, Africa, Latin America and the Caribbean in 2012, and the

findings of the case studies conducted by indigenous people on IFAD-funded projects.

Indigenous peoples' representatives discussed and approved the Synthesis of Deliberations, which was presented to the Governing Council of IFAD. The Synthesis includes concrete recommendations to various stakeholders.

During the panel discussion on the situation of indigenous peoples in Africa, I made a presentation on the way forward of the African human and peoples' rights system regarding the concept of indigenous peoples and the significant progress made by the Working Group through information visits and publications. In my presentation, I also highlighted the various challenges to the effective protection of the rights of this vulnerable group.

5. 11 - 15 March 2013

At the invitation of the Government of Congo, I participated in the pre-session meeting of the UN Permanent Forum on Indigenous Issues held in Brazzaville.

- Experts held discussions on preparations for the World Conference on Indigenous Peoples scheduled for September 2014 in New York.
- I met with NGOs representing indigenous communities with whom we discussed the living conditions of indigenous peoples and the progress made in the implementation of the law to promote and protect indigenous peoples in Congo.
- I also met and discussed with MPs and technical and financial partners involved in promoting the rights of indigenous populations in Congo, including the UN country team, the EU delegation and the US Ambassador.

6. 7 - 8 April 2013

I chaired the meeting of the Working Group which was held just before this Session. The Working Group assessed its activities undertaken during the intersession, and mapped out activities for the next intersession period. The Working Group met with the UN Independent Expert on Minority Issues and discussed various issues of common interest. It also met with representatives of indigenous populations/communities from Kenya and Tanzania, and deliberated on the situation of indigenous communities in those two countries.

B. Launching of Reports and the video film in Congo

7. **On 16 March 2013**, I chaired a ceremony for the launch of the video film on indigenous peoples and the distribution of the report of the promotion mission undertaken by the Working Group to Congo in 2010 and the report of the regional sensitization seminar organized in Brazzaville in August 2011. The ceremony was organized by the NGO ADHUC in collaboration with the Working Group, the Ministry of Justice and Human Rights of the Republic of Congo and the Congolese Representative to the UN Permanent Forum on Indigenous Issues. Various representatives of the Government, embassies accredited to Congo, international organizations, NGOs and indigenous peoples' organizations were present during the event. The video film produced by the Working Group was shown. I made a presentation on the achievements of the Working Group, which was followed by a discussion with the guests.

C. Notes Verbales/Letters

8. **On 18 January 2013**, a note verbale was sent to the Government of the Federal Democratic Republic of Ethiopia requesting the latter to kindly allow the Working Group to undertake a mission to the country in order to be able to verify whether the worrying allegations reported by various sources to the Working Group with regards to the deteriorating situation of pastoralists in Ethiopia are true or not.

By a note verbale dated 13 March 2013, the Government of Ethiopia declined the request by indicating that **“all the peoples of Ethiopia including pastoralists are children of the then founders of the country who kept themselves free and indigenous. For this reason such categorization as indigenous and non-indigenous populations/communities does not exist.....all nations, nationalities and peoples' of Ethiopia are equal and enjoy equal legal protection under the Constitution of the Federal Democratic Republic of Ethiopia”**.

It should be underscored that Ethiopia is a State Party to the African Charter and moreover, is host to the AU headquarters. The country also maintains fruitful

relations with the Commission and has always expressed, during public sessions of the Commission, its willingness to receive subsidiary mechanisms of the Commission which request to visit the country. We would like to seize this opportunity to reiterate the will of the Working Group to establish constructive dialogue with the highest authorities of Ethiopia on the approach and concept of indigenous peoples towards clearing any misunderstandings and differences of opinion regarding the issue of the characteristics of the concept and identification of national communities raised by Ethiopia.

It should be emphasized that the Commission's approach on the issue, as developed in its 2003 report published in 2005, has been duly endorsed and approved by the African Union.

9. On 31 December 2012, I wrote, on behalf of the Working Group, a letter to the President of the African Development Bank, Dr. Donald Kaberuka, regarding the development of Integrated Safeguard Standards (ISS), commending the initiative and also highlighting some of the gaps in the draft ISS. As such, I brought to the attention of the President the fact that the draft does not contain any specific operational requirements to ensure the protection of the rights of indigenous peoples, and that if approved in that form, the African Development Bank will remain the only multilateral bank without a specific policy that recognizes and protects the rights of indigenous peoples.

10. I also underscored the fact that the draft ISS makes no mention of the need to protect the rights of indigenous peoples as per international law (including the African Charter on Human and Peoples' Rights), in the protection of, *inter alia*, indigenous peoples' right to natural resources and land, and their right to free, prior and informed consent.

11. I made some recommendations to the Bank, including:

- I. Extend the process of consultation on establishing the new Integrated Safeguards System to allow inputs from experts of the African Commission;
- II. Establish an open and credible process of consultation with indigenous populations/communities and African civil society organizations, and to

commit to a time-bound period for review of the Integrated Safeguard System, specifically regarding its impact on indigenous populations/communities;

- III. Adopt a specific safeguard policy on indigenous populations/communities, as done by other multilateral financial institutions;
- IV. Build on the following benchmarks for the elaboration of an effective policy for indigenous populations/communities:
 - a. require the free, prior and informed consent of indigenous populations/communities when the relationship between these communities and their lands and resources may be affected; and
 - b. establish an indigenous populations/communities advisory mechanism for the implementation of measures to protect their interests and rights.

12. In response to our letter and recommendations, the Bank invited members of the Working Group and Commissioners to a forum organized from 11 to 12 February 2013 in Tunis on development issues for African populations, including indigenous communities.

II - Activities carried out by Expert Members of the Working Group

A. Meeting of the Working Group

As indicated under Section I of this report, the Working Group held its second 2012 bi-annual meeting in Arusha, United Republic of Tanzania, from 21 to 22 November 2012. Members of the Working Group also attended the launching in Tanzania of the video film on 23 November 2013.

Members of the Working Group participated in the first 2013 bi-annual meeting held here in Banjul, The Gambia, from 7 to 8 April 2013.

B. Research and Information Visit to the United Republic of Tanzania

14. The United Republic of Tanzania granted the Working Group's request to undertake a Research and Information Visit from 21 January to 6 February 2013. The visit was undertaken by Dr. Naomi Kipuri and Ms. Nanta Mpaayei.

The delegation met and discussed about the general situation of indigenous populations with the representatives of various ministerial offices, embassies, UN specialized agencies, international and local NGOs, including indigenous peoples' organizations and several indigenous communities living in different parts of the country. The report of the visit will be tabled before the Commission for adoption at its 54th Ordinary Session.

C. AfDB Forum on Indigenous Peoples' Development Issues in Africa

15. The Forum was organized by the African Development Bank from 11 to 12 February 2013 in Tunis, Tunisia. In addition to the expert members of the Working Group, the Commission was represented by Commissioner Med Kagwa and Commissioner Maya Sahli-Fadel.

The Forum was attended by several development officials and experts, including the Minister of Justice and Constitutional Affairs of Uganda, Hon. General Kahinda Otafire, the Deputy Minister of Chiefs and Traditional Affairs of Zambia, Hon. Ms. Berina Kawandami, the Commissioner for Political Affairs of the AUC, H.E. Mrs. Aisha Abdullahi, the Vice-President of the AfDB, Prof. Mthuli Ncube, and other high ranking officers of the AfDB, the World Bank, and State delegates from various countries. Other institutions and organizations represented at the Forum were the Global Environment Facility, UNPFII, IPACC, Actionaid and others.

16. Dr. Melakou made a presentation, on behalf of the Working Group, on the African Perspective on Indigenous Peoples issues in Development in the context of the United Nations Declaration on the Rights of Indigenous Peoples. The

presentation was followed by discussions on the definition/criteria for identifying indigenous peoples in Africa.

17. During the welcome cocktail on 11 February 2013, Commissioner Sahli-Fadel and Commissioner Kaggwa briefed participants on the work of the Commission and the Working Group, and thanked the Bank for inviting the Commission and the plans for future collaboration.

18. At the end of the Forum, participants strongly urged the Bank to adopt a specific policy on indigenous peoples which includes the identification criteria set by the Working Group. They also called for sustained collaboration with the Working Group and other stakeholders in developing and executing the policy.

D. Exchange Workshop

19. **5 - 6 April 2013, Banjul, The Gambia.** The Working Group, in collaboration with IWGIA, organized an exchange workshop on indigenous peoples' rights between the Inter-American Commission on Human Rights, the ASEAN Inter-Governmental Commission on Human Rights and the African Commission on Human and Peoples' Rights.

20. The workshop brought together experts from the three regions, regional organizations and the United Nations. The UN Special Rapporteur on Indigenous Peoples, Prof. James Anaya, was present during the workshop and made the keynote address. The Office of the UN High Commissioner for Human Rights was also represented. The UN Independent Expert on Minority Issues, Ms. Rita Izsák, attended the Workshop.

21. The workshop served as a forum for the exchange of experiences and strategies between the three regional organizations and those of the UN. It also provided the opportunity for these organs to lay the foundation for future collaboration towards strengthening their efforts in the promotion and protection of indigenous peoples' rights.

E. Publications

22. During the intersession, the Working Group finalized and printed the English and French versions of the “**Manual on the Promotion and Protection of the Rights of Indigenous Populations/Communities through the African Human Rights System**” which was adopted by the Commission during its 12th Extraordinary Session held in Algiers, Algeria, in August 2012.

The Manual is also available on the website of the Commission (<http://www.achpr.org/mechanisms/indigenous-populations/>).

23. The Report of the Regional Sensitization Seminar on Indigenous Populations/Communities in Central and East Africa held from 22 to 25 August 2011 was also finalized and printed. The soft copy is available on the website of the Commission.

These two publications were widely disseminated by the expert members of the Working Group during the intersession period.

III. Recommendations

To States Parties

States Parties are called upon to:

- i. Respond positively and in a timely manner to its Urgent Appeals and to notes verbales by the Working Group to undertake missions; and
- ii. Ratify the ILO Convention 169, and enact specific legislations on the rights of indigenous peoples in line with this Convention and the United Nations Declaration on the Rights of Indigenous Peoples;

24. The Working Group would like to reiterate the recommendations of the IFAD First Forum on Indigenous Peoples held in February, and calls upon States Parties to:

- iii. Recognize the rights of indigenous communities/populations to land and resources; and their contributions to sustainable development through traditional knowledge systems;
- iv. Build the capacity of government institutions to address indigenous populations’ needs and priorities, by providing training to staff and employing indigenous experts within their institutions;

- v. Respect, protect and fulfill the rights of indigenous peoples as contained in the UN Declaration on the Rights of Indigenous Peoples, and acknowledge the role of indigenous traditional institutions, authorities and organizations.

To indigenous organizations and civil society

- i. Increase advocacy campaigns for governments to adopt and implement public policies and laws geared towards the promotion of indigenous peoples' self-determined sustainable development;
- ii. Report regularly to the Commission on the situation of indigenous communities in countries in which they operate, and in this regard work closely with the Working Group.